not declare it shall avoid the contract, it is not perceived how the defendant could avail himself of this ground to defeat a recovery"—8th Whe., 355. The demurrer in the case of Owens was probably filed because of this decision in the case of Flickner—that such a defence was not admissable under the same charter, and after the cause went back, was again tried, and again came to the Supreme Court, though at that time upon replication—they say they deliberately adhere to the decision in the case of Flickner.

In our view of the case, in 2d Peters, it does not sustain the position of counsel, that the contract in the case before us is void; it could only be authority for that position in a state of case, in which the contract was left unaffected by any statute such as ours.—Every decision cited by the court occurred between individuals, thus showing that it was not intended to draw any distinction as to the validity of the contract between a natural and an artificial person. But it does go the length contended for, we do not believe that it is in accordance with either of the previous or subsequent decisions of the same august tribunal, and the convictions of our own judgment cannot be surrendered to its reasoning or authority.

The case of the Bank of Chilicothe vs. Swayne and al, 8 Ohio, 257, was likewise urged as an authority for the same position, but does not sustain it.

On the contrary, the court reviews the whole train of previous decisions in that State and in Pennsylvania, on the subject of usury, and in conclusion says, "upon the whole we entertain the opinion that the contract is not void, as being against the general law of the State upon the subject of interest."

The judgment in that case was for the defendants upon another point to be hereafter considered more at large—and that point cannot be more concisely stated than in the language of the court itself: "This contract is void, not because the rate of interest is greater than the rate allowed by the general law of the land, but because it is such a contract as the plaintiffs had no power or capacity to make."

The same question arose in the Philadelphia loan company vs Touner, 13 Conn., 240. It was there held that the bank was on the same footing with individuals, as to usurous contracts. Lyon vs State Bank of Alabama, 1 Stewart 468, is an express authority, that where a bank exceeds the rate of interest allowed by its charter, but does not transcend the general usury law, the contract is not usurous, or otherwise void for illegality. In this conclusion we concur.

It is insisted lastly, that if more interest is received than is allowed by the charter, the contract is void, because of want of capacity in the corporation to make it.

The rules for the construction of corporate powers have been frequently laid down; perhaps there is none more just, comprehensive and applicable than that to be found in Angell & Ames, 140, adopted in 8 Gill & Johnston, 319. "In deciding whether a corporation can make a particular contract, we are to consider in the first place, whether its charter, or some statute binding upon, forbids or permits it to make such contract; and if the charter and valid statutory law are silent upon the subject, in the second place, whether a power to make such a contract may not be implied on the part of the corporation, as directly or indirectly necessary to enable it to fulfil the purpose of its existence, or whether the contract is entirely foreign to that purpose."

The powers to loan money, to issue bills and notes—to accept securities and receive payment, are necessary to the existence of every banking institution. Without them it could not conduct its business, and their enumeration is but an unfolding of the idea, of what is implied by the term bank. When it does any of these things, it is strictly within the bounds of its powers, and the act so far from being foreign to the purpose of its institution, is entirely subservient to it. Every one admits that a bank may discount a note, unless it be specially restrained; but the argument here is, that it has no power to discount a note at a greater rate of interest than its charter allows; if it does the note is *void*, because of the want of such power.

There is this distinction between the contracts of an individual and of a corporation: "The former can do all acts and make all contracts, which are not in the eye of the law, inconsistent with the general good of society. The latter can make only such, as are connected with the purpose for which it was created, and which are necessary either directly or indirectly to answer the end and object for which it was instituted.' (Angell & Ames 139) with this difference the acts of each should be viewed in the same light. In other words, if a corporation makes a contract in regard to a matter fairly in the scope of its charter, the construction should be the same as in the case of an individual. Upon another branch of the case, we have shown, that a bank, except so far as exempted or restrained by the terms of its charter, is subject to the general laws of of the land, precisely as a natural person.—It remains to enquire what is the consequence, when a natural person exceed the limits of a particular authority entrusted to him. Take first the case of a partnership, which more nearly resembles a corporation than any other. Each partner is the accredited agent of all, and as long as he acts in matters within the scope and objects of the partnership, all are bound. But if one make a contract entirely foreign to the purpose and object of the partnership, the rest are not bound. But suppose he makes a contract embracing some matters within the scope and objects of the partnership, and others beyond such scope, is the whole contract void, or only the latter portion of it? We answer only the latter part, and that the agreement as to the residue is good. Wintle et al vs Crowther, 1 Cromptor & Jervis Exct. Rep. 316, Baley on bills 57. The rule is the same in case of agency, though this has been sometimes doubted.

Lord Coke thus laid down the rule "where a man doth less than the commandment or authority committed unto him, there the commandment or authority being not pursued, the act is void; and, where a man doth that which he is authorized to do, and more, there it is good for that which is warranted, and void for the rest. Yet both these rules have divers exceptions and limitations," Co. Lit. 258. This, however, is the general rule, and it is recognized by the ablest modern writers, 2 Kent's Com. 617. Story on Agency 158. Of course it cannot apply where the boundaries between the excess and the rightful execution are not distinguishable. The cases of excessive appointments under powers for the purpose, which are holden to be void at law, though good in equity, seem to constitute exceptions to this rule. The articles of partnership association, or the letter of attorney form the rule of government in these instances, just as the charter does in the case of a bank. The moment it is established that banks are included in the general terms of the statute regulating interest, all doubt and question are at an end. If the words of that statute were that no person or bank shall take, &c., there would be no room to contend that the whole contract is void for want of power, any more than for account of usury; if banks are by construction within its terms, the result to precisely the same as if they were expressly named. Indeed there is no reason for the application of a rule of construction to the contract of a bank made in regard to a matter within the scope of its charter, different from that which governs an individual. The cases except that in 8th Ohio, according to our understanding, all treat them in the same way. If a corporation does an act against the prohibition of a statute it is void; so of an individual. If it violates a statute such as a law in restraint of banking, its contracts is void; so of an individual. If it does an act foreign to the purposes of its institution, it is void; so in reference to a partnership. If it has power to a limited extent and goes beyond it, the excess may be avoided; so of an agent. The almost countless cases on the subject of taking more interest than is allowed by their charter, or general law of the land put them on the same footing with individuals, with the single exception of the case in Ohio. If the uniform testimony of Courts and Judges can settle any point, it is settled that the act of a bank in taking excessive interest is viewed precisely as the act of an individual.

The case in Ohio established a principle different from what is settled in any other that we have seen, and as it has been strongly urged upon our notice, upon this point of want of power, it requires some examination at our hands.

The case is founded, as we conceive, upon a misapplication of principles. For example here follows a portion of its reasoning, and that too, which is the turning point of the decision. The court says, "for a corporation created for the purposes of contracting a rail road, or of acting as a library association, to carry on banking operations, and to claim to do it under its charter, would be absurd unless the power so to do, was expressly or by implication authorized in its charter. If an agent is restricted by the power received from his principle, if the Legislture of the State cannot transcend the powers delegated in the constitution, much less can a corporation go beyond the charter by which it exists." Now these principles are all undeniable. If a corporation makes a contract entirely foreign to the purposes of its institution, as in case a rail road company or library association attempts to carry on banking, the act is void, simply because of a want of power in refference to the subject matter, unless there is some general law to cure it. But if the agent exceed his authority the act is now void, if a good can be seperated from the bad as we have already shewen. If a Legislature pass an act which transcend the constitution, it is void only for the excess, as has been often decided. The first principle adverted to, as to a contract foreign to the purposes of the institution, had nothing to do with the case before the court, because it was an act of banking done by a bank. The last was misapplied, because the act was only an exceeding of the power, which was not void, except for the excess. The court had already stated in the same case, that by the law of Ohio, the taking of usury by the bank, did not prevent it from recovering principal and legal interest. That was in our view, in accordance with all previous decisions, an end of the controversy and the act of the bank, to that extent legalized. To hold otherwise is to allow to the bank the benefit of the general law, in one particular, and to deprive it of the same benefit in another. The court in Ohio in conclusion rests its decision, as to the point of want of power, upon the case of Owens 2d Peters. That case does not sustain the position. The court, in the case Owens says in the passage already quoted, "the question then is, wether such contracts are void in law upon general principles." The question of power or want of power, in the bank, is not once alluded to:—it is decided entirely upon general principles, and every case cited was between individuals founded upon some contract against law common or statute, or againste public policy. These do not go to show, that the contract of the bank in that instance was void for want of power: but place it upon the same footing with individuals. It may be with here to remark, that the Kentucky statute upon the subject of usury, in force at the time of the making of the note sued on, like the English statute of Ann, avoided all contracts ineffected with usury. That the question as to power, was not considered by the court, may be inferred from the circumstance that in the case of Flickner in 8th Wheaton, the same court had decided, that a violation of the charter of the bank, in this very thing of taking more interest than was allowed, could only be reached by a proceeding on the part of the government; the defendant had nothing to do with it; in the case of Owens, this point is not alluded to, but in 9th Peters, they say they deliberately adhere to it. They adhere to the principle, not that the defendant might not set up usury as a defence where there was a usury statute against the contract, but that he should not set up in a collateral proceeding, a violation of the charter—in other words, a want of power to make the contract. That this is the doctrine established by these cases, is still more manifest, because in the case of Wagoner in 9th Peters, they make the case turn exclusively upon the question of usury, precisely as if the note had been given to an individual. The case of Swayne is against the case of Owens; so far as it takes the statutes of usury of Ohio into consideration, it is against it too; at all events it is against the case in 9th Peters, on the point that a want of power can be inquired into in that collateral way. The Ohio case takes the principle which was, in 2d Peters applied to a charter containing a prohibition to take more than 6 per cent. interest, and in which the statute law of the land produced no modification, and applies it to a similar charter; but in a State where the general law relieved the party from any loss beyond the excess of interest, it was a misapplication of the principle, and a misapprehension of the ground on which the other case rests. Regarded as a question of usury, the courts would consider of it in an action between the parties to the contract—as a question of power they refuse to take cognizance of it, in a collateral way. We think, then, that Swayne's case, standing as it does alone, upon this point, cannot be followed. It is entirely distinct from that large class of cases in which a corporation makes contracts entirely foreign to the powers of its creation as indicated in its charter—these are void upon general principles.

The doctrines laid down in Flickner's case, 8th Wh., has been followed by some of the most respectable courts in the Union, Chester Glass Co. vs. Dury, 6 Mass., 102, Silver Lake Bank vs. North; 4th Johns, Ch. 370, Angell & Ames 146. The Bank vs. Portiaux, 3 Ran. 143. A portion of the opinion of the court in the last case, so well illustrates the point, that I cannot forbear transcribing it, "it would be extremely inconvenient, if every contractor with one of the banks could, for the purpose of avoiding his contract, institute the enquiry whether the bank had violated its charter. This case does not fall within the principle of Wilson vs. Spencer, 1 Rand. 76. In that case, an association of individuals dealt in a manner entirely prohibited by law, and a contract founded on those unlawful dealings, was decided to be void. In this case the statutes do not prohibit the purchase of real property by the banks, but only limit the extent of such purchases; and the question whether they have or have not exceeded the limit prescribed to them, is not fit to be tried in this suit and at the instance of this party."

I think then it may be safely concluded that this question of power does not interfere with our conclusion, and that when a bank discounts a note in its usual course of business, if it should commit usury, it is subject to precisely the same law for so doing with an individual.

Usury has now ceased to be considered a crime, 1 How. 590, 600. It is unlawful to the extent it is made so by statute and no further. If in this State a contract violates the statutes, it may be inforced for the principal sum, incurring the loss of interest.—The good may be severed from the bad, the legal from the illegal—and by the best decisions, recovery may be had in all such cases for the part which is good, the whole not being void. United States vs. Bradly, 10 Peters 360, Pigots Case. 11 Co. 27, Newman vs. Newman 4 M & Slew, 66.

There is another feature of this case which should not be overlooked. The contract on the part of the bank is executed, and the opposite party is secured in the injoyment of the fruits beyond disturbance. How then can be object to the want of power? In England the rule that a corporate act to be binding must be under seal, is still rigidly adhered to except perhaps in commercial transactions, and it cannot make a valid lease of lands, unless under its corporate seal. If it make an executory lease not under its corporate seal, it could not be sued upon it, and therefore shall not sue unless it offers to perform, because of a want of entire mutuality. But if it has made such lease, and the other party has enjoyed the promises, the corporation may sue and recover, Mayor and Corporation of Stafford vs. Till, 4 Bing. 75 Chit. Con. 221.

Another circumstance may be worthy of remark, though it has had very slight influence on our determination. It is that the charter of the bank, in regard to contracts having, 12 months to run, contains no express prohibition against exceeding 8 per cent. interest, and imposes no penalty. In this respect it differs from the case of Owens and of Swayne.

I have endeavored to show, that the principle of want of power cannot be made to operate in this case, but even if mistaken in this, it cannot benefit the defendant in error. It is clear that the bank had the power under its charter to discount the note sued on, and reserve *eight* per cent discount, which is all that was done. If it had not the power to make the additional stipulation, about the cotton and the domestic exchange, that is the part which fails for want of power. "Where a distinct limitation or appointment is made according to the power and another distinct limitation or appointment is made, though in the same instrument exceeding the power, the former is good even at law, and the latter will be held void."—Sugden on Powers, iii, 550; 6 Story Agen. 150. Thus even in a class of cases, which seem to form an exception to the general rule as before stated, if the good may be seperated from the bad, the sound from the unsound, it is done. By the application of this rule, the note in this case is sustained. But we desire the case to rest upon the general principles herein laid down, rather than upon any exception, and we think it may safely stand upon them.

Some apology may be necessary for the unusual length of this opinion; it may be found in the fact, that we were admonished that many other cases in this and the inferior courts awaited our decision. It was therefore not deemed sufficient to state the mere result of our inquiries without also making known the process of reasoning by which we reached the conclusion.

On the whole we are of opinion that a corporation is subject to the constitution and general laws of the land, in force at the time of its creation, and applicable to its condition, precisely as a natural person, except so far as its charter has confered exemptions, or imposed restrictions. The charge of the court below departs from this principle, in declaring that the contract if usurious is wholly void. The judgment is therefore reversed, and the cause remanded for a new trial, to be goverened by the principles herein laid down.

Judgement reversed,

CLAYTON.

JUDGE TURNER concurs.

THE LOCUSTS.—TO POSTMASTERS AND EDITORS.—This singular insect is at this time amusing the people in various parts of the United States. But as it appears in one year in one section, and in another year in another, it is a mater of great intrest in natural history to ascertain the boundares and extent of territory ocupied by each family or district. I announced, a few days since, that I had ascertained the existence of sixteen different districts—since then I have discovered two more, making eighteen districts or families of locusts. If each post master in places where locusts appear will drop me a line, stating the facts of their appearance at his location, I shall be able to make out a map of each district, embracing every state, county town, &c., occupied by each family of locusts. This will give little trouble to the postmasters, and will be of great service to the developement of the natural history of our country. I will also send to every post master, who will send me the information required as above, a book, containing the whole natural history of the insect. The editors who shall copy this artical and send me a copy of the paper containing it, I will also send a copy of the book above mentioned, when published. If editors of papers and postmasters comply with this request, I shall be able to present to them the history of the most curious insect of world. It must be obvious that nothing but the agency of the post masters and editors, as above can accomplish the object; and I ask it of them, the more freely, because I can have no personal intrest in it.

GIDEON B. SMITH, M. D.

Baltimore, (Md.) June 14, 1843.

Speaking of the President's journey and his reception by different communities and gatherings of the people, the *New York Express* says that "not one of the numerous speeches which have been addressed to him from the time he set out from Washington until he left New York made the most distant allusion to his re-election; not a shout from the member of any crowd, nor a banner nor inscription of any kind from any quarter has been heard of, which had a tendency to convey the slightest indication to the President that there was a voter who intended to support him at the next contest." This is certainly a remarkable fact, and the Express says that it has reason to believe, upon information from a variety of sources, that the fact has not escaped the President's notice. "The sole object," says the Express, "of the extraordinary attentions of our locofoco city rulers was to obtain possession of the few remaining offices now in the hands of the whigs; but they did not dare to bid so high as to offer him their support."

National Intelligencer.

MORE CAUSE OF TROUBLE ON THE FRONTIER.—It appears from the Montreal papers that the incendiarism which was so frequent on the frontier during the Canadian troubles two or three years ago, has been recommenced. During the last week one dwelling house and three barns in the vicinity of Odeltown were fired the same night, and apparently at the same time. No doubt can exist as to the act having been the work of incendiaries. The acts are charged to citizens of the United States, but with what justice and upon what evidence does not appear.—*Ib.*

YAZOO CITY:

Friday, July 14, 1843.

J. A. STEVENS, EDITOR.

For President of the United States in 1844

HENRY CLAY,

OF KENTUCKY.

WHIG BOND-PAYING TICKET.

FOR GOVERNOR,

George R. Clayton,

Of Lowndes County.

FOR SECRETARY OF STATE,

Lewis G. Gallaway,

Of Holmes county.

FOR TREASURER,

William Hardeman,

Of Madison county.

FOR AUDITOR OF PUBLIC ACCOUNTS,

Luke Lea, *of Hinds.*

WHIG TICKET.

FOR THE HOUSE OF REPRESENTATIVES,

W. R. MILES,
BENJ. LEWIS.

The Eighth Volume.

The present number commences the 8TH VOLUME OF THE WHIG. We have struggled on for the last eight years against disadvantages and disappointments in pecuniary affairs; but thanks to the liberality of the public and our own endeavors, we have been enabled to weather the storm, and furnish the patrons of the WHIG with a newspaper (we believe) well filled with

"The passing tidings of the times."

In presenting the first number of a new volume to the public, we would suggest to our numerous debtors, the propriety of an immediate liquidation of the sums due us; we have to *pay cash* for paper, ink, journeymen, and all materials requisite in our office, and it is not to be expected that we can do this, unless we can collect the accounts due us for work done. We hope this will be taken into consideration, and the difficulty speedily removed. We make no promises as to the further usefulness of the Whig—its appearance and editorials must speak for themselves.

Cotton Bonds.

We publish this week, the highly important decision by the Supreme Court of this State, on what has been familliary known as the Cotton Bond cases of the Banks.

The decission was delivered by Judge CLAYTON in the case of the Commercial Bank of Manchester vs. John T. Nolan, taken up from this county, and covers the whole ground of defence set up by the shippers of cotton. It is most able and alike creditable to the talents and integrity of our Supreme Judiciary.

The Steamer Volant.

This excellent boat having been compelled to undergo some repairing, left this place on Wednesday last for New Orleans for that purpose. She will be absent about two weeks, when she will again be at her post making her regular trips.

☞ We are again under obligations to Capt. Wallis of the Volant, for late New Orleans and Cincinnati papers.

In the Field.

The Hon. GEORGE R. CLAYTON, the Whig candidate for Governor, has entered noble into the work of canvassing the State; he addressed the citizens of Madison county at Canton on Monday last. We hope to have him in Yazoo shortly.

☞ The great length of Judge Clayton's bank decision, has prevented us from having our usual quantity of editorial and selected matter in to-day's paper.

LOUISIANA ELECTION.—So far as returns have been received from Louisiana it appears that the whigs are *licked*. Slidell (dem.) is elected in the first district, White (whig) is supposed to be re-elected in the second district, and Dawson (dem.) is thought to be elected in the third district.

Kendall of the Picayune and Ex-Texan prisoner, makes it a "*pint*" to drink a *quart* of cold water every morning, lest he might be thirsty that day when the delicious article could not be had. He formed the resolution when nearly famished, marching a prisoner over the immense prairies lying between Santa Fe and the city of Mexico.

The Oration delivered by Mr. Webster at the Bunker Hill Celebration on the 17th ult., is a splendid production.

The Legislature.

The two Houses met at the Capitol at 10 o'clock, A. M., on Monday last, in pursuance of the calll from the Governor. After organizing, a joint committee was appointed to wait on his Excellency and inform him that both Houses had organized, and were ready to receive any communicatian he had to make to them. The Governor informed the Committee that he was not at that time prepared to make any communication to them, but would be at 12 o'clock, M., on Tuesday. It is said that the meeting between the Committee and his Excellency was a rich scene.

The House adjourned, after a short session, until Tuesday, to allow the Democratic Convention the use of the Hall.

The Democratic State Convention.

The great Democratic State Convention met at Jackson on Monday last at 5 o'clock, P. M., and organized by electing JESSEE SPEIGHT, Esq., of Lowndes, President, and Wm. M. Smyth, of Claiborne, Secretary.—There was quite a full attendance of delegates; what they will accomplish remains to be seen. There appeared to be some dissatisfaction among the delegates generally, notwithstanding a good many patriotic and *feeling* speeches were made for the purpose of pouring oil upon the troubled waters.—The Hon. R. J. Walker addressed the Convention for about half an hour, in which he endeavored to demolish the Whig party but made a most signal failure. The Hon. Pewhattan Ellis, Ex-Mexican Minister, was invited to address the convention, but declined the honor, being, we presume, *too lazy* to talk.

The Convention adjourned, at a late hour, until Tuesday morning at 8 o'clock, without making any nominations.

Captain Tyler and *guard* arrived at Washington City on the 23d ult. Wonder how his accidency succeeded in electioneering.

JURORS.

We would recommond to our Representatives in the Legislature, to have an act passed at the present session, in some way modifying or rather correcting the abuses in the jury service in our Circuit Court. As the matter now stands, a few uneducated men who do nothing and cannot understand the plainest case; who hang about the Court House for the purpose of receiving the emoluments of jurors, sit on and decide nearly every case, thus depriving the citizen of a *trial by his peers*. It is true an intelligent and honest jury are summoned for each week, but one has a sick wife, anothers child has the whooping cough, and a third, probably, is "considerably in the grass"—they are all excused "*provided they will find a substitute*"; this is readily done in the person above mentioned, and thus the trial by jury is subverted. We would recommend that the law proposed to be passed, authorize (for this county) the summoning of double the number of jurors for each week that is now provided for by law; this, we understand, meets the approbation of the Judge of the District, and will no doubt correct the evil.

ANNUNCIATIONS.

For Sheriff.

We are authorized to announce JOHN W. FUQUA, as a candidate for the office of Sheriff of Yazoo county, at the next election.

For Probate Judge.

We are authorized to announce THOMAS B. WOODWARD, Esq. as a candidate for re-election to the office of Probate Judge, at the November election.

We are authorized to announce JOAB R. RICHARDS, Esq., as a candidate for the office of Probate Judge of Yazoo county, at the next November election.

For Circuit Court Clerk.

We are authorized to announce E. W. WHELESS, as a candidate for the office of Clerk of the Circuit Court of Yazoo county, at the next November election.

We are authorized to announce THOS P SLADE as a candidate for re-election to the office of Clerk of the Circuit Court of Yazoo county, at the next November election.

For Tax Collector.

We are requested to announce THOMAS J. WILSON, as a candidate for the office of Tax Collector of Yazoo county, at the next November election.

We are authorised to announce CHARLES M. HENDERSON, as a candidate for the office of Tax Collector of Yazoo county, at the next November election.

We are authorized to announce JOHN P. BEASLEY, as a candidate for the office of Tax Collector of Yazoo county, at the next Nevembor election.

We are authorised to announce M. C. BLINCOE as a candidate for the office of Tax Collector, at the next November election.

For Assessor.

We are utherized to announce WM. H. KEMPTON, as a candidate for the office of Assessor of Yazoo county, at the next Election.

We are authorized to announce JOHN A. HOWARD, as a candidate for re-election to the office of Assessor of Yazoo county, at the next November election.

We are authorized to announce WILLIAM C. HAYS, as a candidate for the office of Assessor of Yazoo county, at the next November election.

We are authorized to announce JOHN O. HUNTER, as a candidate for the office of Assessor of Yazoo county, at the next November election.